

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.709 of 2017

and C.M.P.No.3911 of 2017

The Metropolitan Transport Corporation Ltd.,
Rep. by its Managing Director,
Chennai - 2. ... Appellant / Respondent

versus
Murugan @ Murugesan ... Respondent/Petitioner

Prayer : The appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 04.12.2013 made in M.C.O.P.No.3111 of 2012 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.S.Sivakumar

JUDGMENT

The claimant Murugan, aged 42 years, self-employed, earning a sum of Rs.350/- per day, met with an accident on 03.03.2012 and sustained injuries. Hence, he filed a claim petition in in M.C.O.P.No.3111 of 2012 before the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, claiming compensation of Rs.10,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.6,93,000/- as compensation, the break-up details of which are as under:

Loss of Income	-	Rs. 48,000/-
Transport to Hospital	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Damage to clothing	-	Rs. 1,000/-
Medical Expenses	-	Rs. 30,000/-
Attendant charges	-	Rs. 10,000/-
Loss of amenities of life	-	Rs. 30,000/-
Pain and suffering	-	Rs. 50,000/-
Loss of earning capacity	-	Rs. 5,04,000/-

Total	-	Rs. 6,93,000/-

Challenging the finding on negligence and quantum of compensation as excessive, the Transport Corporation has filed this appeal.

3. The learned counsel appearing for the appellant submitted that the accident had occurred due to the negligence on the part of the injured. Even though R.W.1 in his evidence has stated that the injured tried to board into the running bus and thereby invited the accident, the Tribunal has discarded the same and has erred in holding that the driver of the bus drove the bus in a rash and negligent manner and was responsible for the accident. There is contradiction in the rough sketch and FIR, which disclose the injured entered through the front side of the bus, but, P.W.1 has stated that he entered through the back side of the bus. Furthermore, the author of the FIR was not examined. Hence, the finding on the negligence has to be set aside. It is further submitted that the quantum of compensation awarded is excessive and it has to be reduced.

4. A perusal of the award passed by the Tribunal reveals that the injured examined himself as P.W.1. In his evidence, he has deposed that while he was entering through the back side entrance of the bus, the driver started the bus in a rash and negligent manner, due to which, he fell down and sustained injuries. A complaint was lodged by one Vasu, which was marked as Ex.P1. Ex.P1 reveals that the driver of the bus drove the bus in a rash and negligent manner. Pursuant to the same, FIR has been registered against the driver. The driver of the bus was examined as R.W.1, who in his evidence has deposed that he did not know about the recitals in the FIR, which states that the accident had taken place while the injured boarded through the front side entrance of the bus and the sketch, which states that the injured fell down towards the front side. The Tribunal has also given a finding that if there was no fault on the driver and conductor of the bus, they should have given a complaint before to the police authorities, but, no complaint has been given by the driver and conductor to the police authorities.

5. With regard to discrepancy between the rough sketch and FIR, it is to be pointed out that both are done by two different persons for which the claimant cannot be held responsible. The complaint was lodged by one Vasu based on which the FIR was registered, while the police authorities drew the FIR. However, the Transport Corporation has not taken any steps to examine the author of the FIR and the rough sketch and bring the discrepancy to their knowledge. But the Transport Corporation shifts the burden on the claimant for not examining those persons, which is not sustainable. Since the Transport Corporation has not taken any steps to establish the fact of negligence on the part of the claimant, the Tribunal has rightly held that the accident had

occurred due to the rash and negligent driving of the driver of the bus.

6. The claimant has spoken about the injuries suffered by him. Dr.Saichandran was examined as P.W.2 before the Tribunal, who has also deposed about the injuries suffered by the claimant. The doctor has also deposed that due to the injuries suffered by the claimant on the right shoulder, the elbow movement is reduced and restricted by 30 degrees. He has further deposed that the injuries suffered by the claimant would hamper the claimant from doing work in a standing position for a longer time.

7. Dr.Saravana Bhavanantham was examined as P.W.3 who has deposed about the difficulty faced by the injured during excretion and the pain suffered by the injured. The doctors have assessed the total disability at 95%. Considering the evidence of P.W.1 to P.W.3 and also considering the nature of injuries sustained by the claimant, the Tribunal has fixed the functional disability at 50%.

8. Insofar as the income of the claimant is concerned, it is claimed by the claimant that he was working as Vegetable vendor at Koyambedu and earning a sum of Rs.350/- per day. To prove the same, the claimant has filed a certificate issued by the Village Administrative Officer (Ex.P7) showing the income of the claimant at Rs.84,000/- per annum. However, the Tribunal has held that the certificate is not valid and fixed the monthly income of the claimant at Rs.6,000/-. The claimant was aged 42 years at the time of accident, which stands fortified through Ex.P3, Discharge Summary. Fixing the age at 42 years and also fixing the functional disability at 50%, adopting multiplier of 14, the Tribunal has quantified the compensation towards loss of earning capacity at Rs.5,04,000/- (Rs.6000 x 12 x 14 x 50%).

9. Insofar as the compensation awarded under the other heads are concerned, considering the nature of injuries sustained by the claimant and also considering the impact of the injuries on the income of the claimant, the Tribunal granted a sum of Rs.48,000/- towards loss of income; a sum of Rs.50,000/- towards pain and suffering; Rs.30,000/- towards loss of amenities of life and Rs.30,000/- towards medical expenses. The Tribunal has also awarded a sum of Rs.10,000/- each towards transport to hospital and extra nourishment and Rs.1,000/- towards damage to clothing and Rs.10,000/- towards attender charges.

10. Considering the nature of injuries sustained by the claimant, period of treatment, surgery undergone by the claimant and the impact of the injury on the earning capacity and the future life of the claimant, this Court is of the considered view that the compensation awarded under the above heads are

just and reasonable and it cannot be said to be excessive.

11. For the reasons aforesaid, there being no merits, this appeal is liable to be dismissed and accordingly, the same is dismissed, confirming the award dated 04.12.2013 made in M.C.O.P.No.3111 of 2012 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai. Consequently, connected miscellaneous petition is closed.

12. The appellant Transport Corporation is directed to deposit the entire compensation awarded by the Tribunal, less the amount, if any already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accident Claims Tribunal
(III Court of Small Causes),
Chennai.

2.The Record Keeper,
VR Section,
High Court,
Madras (2 copies)

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